IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.696 of 2007

Mani .. Petitioner

Vs

1. The State of Tamilnadu,
   rep. by its Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police,
   Salem City. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Ms.R.Subadra Devi
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

Aggrieved by the order of incarceration dated 24.4.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by which one Nagma @ Thangayee, mother of the petitioner herein, was confined to Central Prison for Women, Vellore, branding her as a Bootlegger, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 24.4.2007 in C.M.P.No.16/B.L./Salem City/2007, to set aside the same and to direct the respondents to produce the above said detenue before this Court and set her at liberty.

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2. According to the respondents, the detenue was found selling illicit arrack to some persons on the side of a odai near her house. The Inspector of Police, Prohibition Enforcement Wing, Salem City apprehended the detenue and seized the illicit arrack found therein. The samples were sent for chemical analysis and it was found that the arrack contained 5.2% mg atropine per 100 ml. A case was registered in Crime No.241/2007 under Section 4(1)(i), 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act.

3. Taking note of the above case as ground case and three adverse cases of alike nature, the second respondent, satisfying that there is a compelling necessity to detain the detenue in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a bootlegger.

4. Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay in considering the representation of the detenue, we do not propose to go into the other aspects, as the said ground of belated consideration of the representation has to succeed. According to the learned counsel, there was a delay in serving the rejection letter on the detenu, which vitiates the order of the detention.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be

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considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 24.4.2007. The detenu has made a representation dated 8.5.2007 to the Government, which was received on 14.5.2007. Remarks were called for from the detaining authority on 15.5.2007, who in turn, called for parawar remarks from the sponsoring authority and on receipt of the same by the Government on 23.5.2007, the file was circulated on 24.5.2007 and the Under Secretary and the Deputy Secretary dealt with the file on 25.5.2007 and on 30.5.2007, the Minister concerned rejected the same. It is contended that even though the rejection letter was prepared on 31.5.2007 and sent on 1.6.2007, the same was served on the detenu only on 7.6.2007 and in the absence of convincing reply on behalf of the State, the order of detention vitiates. We find some force in the contention of the learned counsel. Even excluding the intervening public holidays viz., 2.6.2007 and 3.6.2007 (Saturday and Sunday), there is a delay of four days in serving the rejection letter on the detenu.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to

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become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, admittedly, there is a delay of four days in serving the rejection letter on the detenu and in the absence of valid explanation for the said delay, in our considered opinion, the same vitiates the order of detention. We are, therefore, inclined to allow this petition. Accordingly, the order of detention dated 24.4.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The Secretary to Govt.,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police, Salem City.

3. The Public Prosecutor, High Court, Madras.

4 The Superintendent, Special Prison for Women,
   Vellore

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

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PV(CO)
RVL 28.09.2007

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